LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
APR 9 1956
HAROLD B. WILLEY, Clerk

IN THE

# Supreme Court of the United States

October Term, 1955.

No. 529.

MARIE DESYLVA,

*Petitioner,*

*vs.*

MARIE BALLENTINE, as Guardian of the Estate of STEPHEN WILLIAM BALLENTINE,

*Respondent.*

On Writ of Certiorari to the United States Court of Appeals For the Ninth Circuit.

## BRIEF FOR RESPONDENT.

MILTON A. RUDIN,
6400 Sunset Boulevard,
Los Angeles 28, California,
*For Marie Ballentine, as Guardian of the Estate of Stephen William Ballentine, Respondent.*

MAX FINK,
CYRUS LEVINTHAL,
LEON E. KENT,
RONALD K. LIPSTONE,
LEWIS A. DREYER,
*Of Counsel.*

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

# SUBJECT INDEX

# TABLE OF AUTHORITIES CITED

MISCELLANEOUS

STATUTES — PAGE



TEXTBOOKS

IN THE

# Supreme Court of the United States

October Term, 1955.

No. 529

MARIE DESYLVA,

*Petitioner,*

*vs.*

MARIE BALLENTINE, as Guardian of the Estate of STEPHEN WILLIAM BALLENTINE,

*Respondent.*

## BRIEF FOR RESPONDENT.

### Questions Presented.

(1) When a deceased author leaves a surviving spouse and child, do they both share in the benefits of the copyright renewal which thereafter accrues, or does the surviving spouse receive the renewed copyright to the exclusion of the child?

(2) Does the term "children," as used in 17 U. S. C., Sec. 24 (1952), include an acknowledged illegitimate child?

### Statement of the Case.

This cause was decided in the Trial Court upon motion for summary judgment [R. 29, 33]. In the Trial Court, the plaintiff (respondent here) and defendant (petitioner here) both moved for summary judgment [R. 14, 24].

The Trial Court made its determination based upon the undisputed facts and stipulations of the parties [R. 20-24], and determined that the child, Stephen William Ballentine, also known as Stephen William DeSylva [R. 17], a minor, was the child of George G. DeSylva, the deceased author, within the meaning of 17 U. S. C., Sec. 24 (Appendix A) [R. 32].

The undisputed facts before the Trial Court, among other things, proved that the decedent, during his lifetime, generally and formally acknowledged the child; that the acknowledgment of the child constituted an acknowledgment within the meaning of California Probate Code, Section 255 (Appendix B) [R. 30].

The issue relating to the question of whether or not the child was fully legitimated within the meaning of California Civil Code Section 230 (Appendix C), being in dispute upon the facts, was not submitted for determination on the motions for summary judgment.

Respondent appealed from that part of the judgment which held that the widow was the sole owner of the renewal copyrights accruing after the death of George G. DeSylva [R. 35]. Petitioner appealed from the Trial Court's determination that the minor child was a child of George G. DeSylva within the meaning of the Copyright Act [R. 35].

Both appeals were decided against petitioner by the decision of the United States Court of Appeals for the Ninth Circuit [R. 47-67], one judge dissenting [R. 67-71], 226 F. 2d 623 (C. A. 9th, 1955).

## Summary of Argument.

The provisions of law (17 U. S. C., Sec. 24) providing for a second and new term of copyright following the expiration of the original copyright, are a new and second grant by Congress of protection to certain classes of persons, and particularly for the protection of the class "widow, widower, or children." The provisions of the Act grant a completely new franchise and new right to those whom Congress has designated as the dependents of a deceased author, and these rights cannot be dissipated, altered or varied by the author. The author cannot, during his lifetime, dispose of the rights of his family in the renewals and the same are not subject to his testamentary disposition.

The surviving spouse does not receive the renewed copyright to the exclusion of a surviving child because:

(a) The express words of the Act delineate that the entire immediate family of a deceased author, to wit, the "widow, widower, or children," share the renewed copyright as a class;

(b) The Legislative history, as well as the obvious policy and purposes of the statute, confirm the construction that the surviving spouse and child share equally in the renewal benefits;

(c) Considerations of equity and conscience which prompted the enactment of the statute denote that the surviving widow does not obtain all rights in the copyright to the exclusion of the surviving child of the author; and

(d) There is no practice in the amusement or publishing industries or economic considerations which should prompt this Honorable Court to construe the

statutory enactment as now constituted, in a manner which differs from its express language and from the intent of Congress.

The statute does not differentiate between legitimate and illegitimate children. The common law concept of *nullius fillius* is not applicable to a determination of this cause, because the particular legislation was enacted to protect dependents of the author without distinction between children conceived and born in lawful matrimony and other children who are the progeny and dependents of the deceased author. If for any reason, renewal rights granted by Congress in the Copyright Act should be interpreted by the rules governing inheritance, the child in the instant cause is fortified and nevertheless established as a child within the meaning of the Act by the fact that he is acknowledged under the law of the domicile of the parties and therefore inherits from his father under the applicable domiciliary law.

When the widow renewed copyrights following the death of the author, she did so as a member of a class, and as a member of that class must account to the child who is the other member of that same class, for all benefits received.

## ARGUMENT.

### POINT I.

### Basic Principles Underlying the Concepts of Copyright Franchise and the Grant of the Right of Renewal.

A consideration of the basic principles underlying the grant by society of the copyright franchise assists in the clarification of all issues in this cause.

#### (1) Nature of Right Created.

The copyright franchise which the copyright law gives to the author and his family, is an intangible, incorporeal right in the nature of a privilege or franchise, and is *distinct from the property* copyrighted.[1]

#### (2) The Second Grant of 28 Years.

In this cause we are concerned only with the so-called "renewal right" or second term of copyright protection. Congress, in enacting the present copyright law, was faced with the problem—should there be one long term of copyright, or should there be two shorter terms? In its desire to protect the creator of copyrightable works and his dependents,[2] Congress adopted the latter alternative. Con-

---

[1] *Stephens v. Cady*, 55 U. S. (14 How.) 528, 14 L. Ed. 528 (1852); *Security-First Nat. Bank of Los Angeles v. Republic Pictures Corp.*, 97 Fed. Supp. 360 (S. D. Cal., 1951), rev'd on other grounds; *Republic Pictures Corp. v. Security-First Nat. Bank of Los Angeles*, 197 F. 2d 767 (C. A. 9th, 1952); *Millar v. Taylor*, 4 Burr. 2303, 98 Eng. Rep. 201 (1769).

[2] See *Chafee, Reflections on the Law of Copyright*, 45 Col. L. R. 503, 507-508 (1945). "There is the author's surviving family. It often happens that the author does not receive the full benefit of a copyright because he dies before it expires. The benefit and the monopoly may then pass to his widow and children, or to more remote relatives. So far as the widow and minor children go, we all recognize this result as eminently desirable. It goes against the conscience of society that destitution should seize on the family of

gress was aware of the dramatic poverty which attended the immortal authors and composers and their families, and recognized that authors frequently part with their copyrights for sums which have no relation to the true monetary value of the work. The primary and only purpose for enacting legislation which provided a split period of copyright was to give a second, new and separate grant (or so-called "second chance") to authors and their dependents by the renewed copyright.[3]

---

a man who has made possible great public good. Furthermore, the wish to provide for one's widow and children is one of the strongest incentives to work for all human beings. Erskine, after his maiden argument at the bar, was asked how he had the courage to stand up so boldly before Lord Mansfield, and answered: 'I could feel my little children tugging at my gown.' The biographies of authors show that they are more subject than most men to indolence * * *. Consequently, the prolongation of the benefit beyond the author's life so that it reaches his immediate family is amply justified." The author also cites from Macauley that "Milton's grand-daughter had to be relieved from abject poverty by a benefit performance of 'Comus' at the very time that the publisher who owned Milton's works was enjoining a pirate in Chancery."

[3]*Harris v. Coca-Cola Co.*, 73 F. 2d 370 (C. C. A. 5th, 1934), cert. den. 294 U. S. 709, 55 S. Ct. 406, 79 L. Ed. 1243 (1935); *Edward B. Marks Music Corp. v. Jerry Vogel Music Co.*, 42 Fed. Supp. 859 (S. D., N. Y., 1942). It is stated in *Fred Fisher Music Co. v. M. Witmark & Sons*, 318 U. S. 643, 653, 63 S. Ct. 773, 777, 87 L. Ed. 1055; 1062 (1943):

> "* * * should there be one long term, as was provided for in the bill resulting from the conferences held by the Librarian of Congress, or should there be two shorter terms? The House and Senate committees chose the latter alternative. They were aware that an assignment by the author of his 'copyright' in general terms did not include conveyance of his renewal interest. * * *
>
> "By providing for two copyright terms, each of relatively short duration, Congress enabled the author to sell his 'copyright' without losing his renewal interest. If the author's copyright extended over a single, longer term, his sale of the 'copyright' would terminate his entire interest. That this is the basic consideration of policy underlying the renewal provision of the Copyright Act of 1909 clearly appears from the report of the House committee which submitted the legislation (the Senate committee adopted the report of the House committee, see Sen. Rep. 1108, 60th Cong., 2d Sess.)"

> "The limitation which the second proviso imposes upon the author's power to dispose of the right of renewal during his life was * * * clearly intended to protect widows and children from the supposed improvidence of authors in the colloquial sense * * *"[4]

A consideration of the express language of the Act demonstrates that the value of the second term to the author's widow and children, and others designated, results from the paradox that what we denominate as the renewal copyright is not a renewal or extension, but is actually a new right, completely independent of the property in the original copyright, which is given to the designated persons, or groups of persons, in the order specified in the Act.[5] The protection of the "split term" is afforded to the author and his family, as distinguished from, or in opposition to, the interests of the publishers who would prefer the facility of acquiring all copyright interests at the outset. The original copyright franchise is intended to protect the author, whereas the protection afforded by the second copyright, or renewal term, is, in fact, protection to the author *and his family* from the so-called class of "assignees," and from a complete and improvident parting with all rights. Therefore, Congress provided the

---

[4] *Shapiro, Bernstein & Co. v. Bryan*, 123 F. 2d 697, 700 (C. C. A. 2d, 1941).

[5] *M. Witmark & Sons v. Fred Fisher Music Co.*, 38 Fed. Supp. 72 (S. D., N. Y., 1941), aff'd 125 F. 2d 949 (C. C. A. 2d, 1942), aff'd *Fred Fisher Music Co. v. M. Witmark & Sons*, 318 U. S. 643, 63 S. Ct. 773, 87 L. Ed. 1055 (1943); *G. Ricordi & Co. v. Paramount Pictures, Inc.*, 189 F. 2d 469 (C. A. 2d, 1951); *Silverman v. Sunrise Pictures Corp.*, 273 Fed. 909, 19 A. L. R. 289 (C. C. A. 2d, 1921); *White-Smith Music Pub. Co. v. Goff*, 187 Fed. 247 (C. C. A. 1st, 1911); *Shapiro, Bernstein & Co. v. Jerry Vogel Music Co.*, 115 Fed. Supp. 754 (S. D., N. Y., 1953), rev'd on other grounds, 221 F. 2d 569 (C. A. 2d, 1955), reh. 223 F. 2d 252 (C. A. 2d, 1955); *Fitch v. Shubert*, 20 Fed. Supp. 314 (S. D., N. Y., 1937); *Southern Music Pub. Co. v. Bibo-Lang*, 10 Fed. Supp. 975 (S. D., N. Y., 1935).

second term as a completely new estate, clear of all rights, interests or licenses granted under the original copyright.[6]

Congress drafted the renewal portions of the Act in such manner that the original creator could not, by any method, deprive his family of their renewal rights.[7] The provisions made for the second term of copyright are clearly a recognition by Congress that by the very event of the death of an author, his family stands in more need of the only means of subsistence ordinarily left to it.[8]

In the absence of such renewal right, or in the absence of action taken pursuant to such right, the author's work would automatically enter public domain upon the expiration of the original copyright term. It is particularly important to observe that the "right" of renewal, if not acted upon, dies. It never goes into an estate of a decedent. The Act is diametrically opposed to the concept of testamentary disposition; and it is not related to, dependent upon, or fixed by the law of descent.[8a] The right

---

[6]*Edward B. Marks Music Corp. v. Jerry Vogel Music Co.*, 42 Fed. Supp. 859 (S. D., N. Y., 1942); *G. Ricordi & Co. v. Paramount Pictures, Inc.*, 189 F. 2d 469 (C. A. 2d, 1951), cert. den. 342 U. S. 849, 72 S. Ct. 77, 96 L. Ed. 640 (1951); *Shapiro, Bernstein & Co. v. Bryan*, 27 Fed. Supp. 11 (S. D., N. Y., 1939).

[7]In *Silverman v. Sunrise Pictures Corp.*, 273 Fed. 909, 19 A. L. R. 289 (C. C. A. 2d, 1921), the Court stated:

> "* * * the author cannot take away the rights of widow, children, etc., before the opening of the last year of original copyright. It is not until then that any estate or chose in action arises or exists; and when such right arises it is * * * a new estate, not a true extension of the existing copyright."

[8]7 Register of Debates, Appen. cxix (1830).

[8a]Section 24 of Title 17 U. S. C. is not a statute of inheritance but creates a new right. The right to the renewal does not grow legally out of the original copyright, but is a "new creation for the benefit (if the author be dead) of those naturally dependent upon or properly expectant of the author's bounty." *Silverman v. Sunrise Pictures Corp.*, 273 Fed. 909, 911 (C. C. A. 2d, 1921), cert. den. 262 U. S. 758, 43 S. Ct. 705, 67 L. Ed. 1219 (1923). See, also, *Shapiro, Bernstein & Co. v. Bryan*, 123 F. 2d 697, 700 (C.

to apply for a renewal in the twenty-eighth year of the original copyright period is not a hereditament, and is not capable of being inherited. The foregoing concepts are important to a consideration of the renewal provisions designed primarily for the protection of the immediate family of the author, and are particularly important to a consideration of the concept of the word "children" as used in the statute.

## POINT II.

### The Statute Does Not Give the Widow or Widower Priority on the Renewal of Copyrights to the Exclusion of the Children of the Author.

#### (1) The Language of the Statute Clearly Shows That No Priority Is Provided Within the Immediate Family Class of "Widow, Widower, or Children."

> "The intention of the Congress is to be sought for primarily in the language used, and where this expresses an intention reasonably intelligible and plain it must be accepted without modification by resort to construction or conjecture." (*Thompson v. United States*, 246 U. S. 547, 551; 38 S. Ct. 349, 351, 62 L. Ed. 876 (1918).)

It is the position of respondent that "widow, widower, or children" constitute a single class, and that respondent's position is sustained by the words of the statute.

The pertinent portions of Title 17, U. S. C., Section 24, providing for the renewal of copyrights, reads as follows:

> "Duration; renewal and extension:
>
> "The copyright secured by this title shall endure for twenty-eight years * * * *And provided fur-*

---

C. A. 2d, 1941). The purpose of the aforesaid section is to provide, as a matter of public policy, that the right of renewal should be personal and that the dependents of the author should not, in any way, be cut off from the benefit of the new monopoly. *White-Smith Pub. Co. v. Goff*, 187 Fed. 247, 253 (C. C. A. 1st, 1911).

> *ther*, That * * * the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: * * *." (See Appendix A.)

It is contended by petitioner that if the widow or widower survives, such widow or widower has the sole right in the renewed copyright, and enjoys the entire renewal copyright to the exclusion of the author's children. The interpretation contended for by petitioner could only apply if the language of the statute were entirely different from the wording actually adopted. In order for the statute to conform to petitioner's contention, it would be necessary that the language of the statute read:

> "Copyright may be renewed by the widow or widower, if the author be not living, or, if neither the author nor the widow, or widower is living, then by the children."

It is the absence of such language which petitioner attempts to read into the statute which demonstrates that the family is treated as a class. The difference between the Act, as it actually reads, and the way petitioner would like to have it construed as reading, is obvious.

The intention to provide for the widow, widower, and children as a class is clearly and unequivocally demonstrated by the fact that the statute indicates the priority of each particular group or *class* entitled to the renewal

privilege by the use of a qualifying phrase inserted between each group or *class. No such qualifying phrase is used or found in the Act within the group or class of "widow, widower, or children."* The statute provides that the author is entitled to the renewal, and then follows the qualifying phrase, "if (he is) still living"; next, the widow, widower or children are entitled to the renewal, and then follows the qualifying phrase, "if the author be not living"; next, the Act provides "or if such author, widow, widower or children be not living, then the author's executor, etc. * * *" The Act does not provide a qualifying phrase between "widow, widower, or children of the author," to separate the one from the other as separate classes. It does not seem probable that Congress would have used the word "or" to denote priority between "widow, widower, or children," when, in fact, the language of the statute delineates a qualifying phrase as between all other classes.

Petitioner contends that the widow or widower takes precedence over the children, based upon the fact that the language referring to the family group of "widow, widower, or children" employs the coordinating article "or," and that such word is used in the disjunctive, meaning alternative. The words "or" and "and" are frequently used loosely and without precision, and their sense is more readily departed from than that of other words.[9] It is well established that the conjunctive and disjunctive are signified interchangeably by the use of the word "or."[10]

---

[9] *Murphy v. Zink*, 136 N. J. L. 235, 239, 54 A. 2d 250, 253 (1947); *Asher v. Stacy*, 299 Ky. 476, 479, 185 S. W. 2d 958, 959 (1945); 2 Sutherland, Statutory Construction (3rd Ed.); 451.

[10] *Union Starch & Refining Co. v. N. L. R. B.*, 186 F. 2d 1008, 1014 (C. A. 7th, 1951), cert. den. 342 U. S. 815, 72 S. Ct. 30, 96 L. Ed. 617 (1951), and cases therein cited; *Tyson v. Burton*, 110 Cal. App. 428, 432, 294 Pac. 750, 752 (1930).

Moreover, using the word "or" as an alternative does not denote a priority unless we modify the language employed by reading into it some qualifying phrase such as, "or if a widow or widower does not survive, then the children." To superimpose such a qualifying phrase would modify the language used in the statute by a construction foreign and contradictory to its present language.[1]

The word "or" is quite generally used to indicate both the conjunctive as well as the disjunctive, such as "and/or." For example, if a United States Savings Bond is payable to "John Doe *or* Jane Doe," it is clear that although either John Doe *or* Jane Doe may apply to cash the bond, both own it. Likewise, a bank account in the name of "John Doe *or* Jane Doe" indicates that either may utilize the funds, and that both have rights therein. The fact that the framers of the present law intended to use the word "or" in the conjunctive sense, as well as the disjunctive (*i.e.*, "and/or") is clearly demonstrated from the other uses of this same word "or" in the accompanying phraseology in the same statute. Note particularly the use in the conjunctive as well as disjunctive sense demonstrated by the language immediately following the class, "widow, widower, or children"; to wit, "if such author, widow, widower, *or* children be not living."

If the word "and" were used instead of the word "or" in the clause, "widow, widower, or children," there would be those who would contend that all must join in the

---

[1] Webster's New International Dictionary (2d Ed., unabridged), defines "or" as: "a coordinating particle that marks an alternative; as you may read or may write . . . It often connects a series of words or propositions; presenting a choice of either; as, he may study law *or* medicine *or* he may go into trade." Disregarding our feelings of what he should study, it is clear that the word "or" by itself indicates a choice and nothing more—it does not indicate which choice is preferable until language is added or read into the sentence to indicate that. To do so would, of course, modify the language used in the statute by construction.

application for renewal, and that if any one failed or refused to join, the renewal would be invalid.

The Act provides for substitution, not of the children for the widow or widower, but of the "widow, widower, or children" for the deceased author. It is possible that under given situations relating to wills and deeds that the word "or," when construed in connection with the entire "four corners of the document" may be interpreted as a word creating substitution by reason of the intention of the testator or grantor as gleaned from the entire document. If we interpret the statute by its "four corners," it is obvious that the intent is to substitute "widow, widower, or children," in a class for the deceased author, and that the word "or," in light of the intention of Congress as disclosed by the entire statute, cannot be interpreted in accordance with the suggestions of the petitioner.

**(2) The Intention of Congress to Grant Equal Rights to All Members of the Immediate Family of the Deceased Author Is Demonstrated by the Legislative History of the Act.**

The intention of Congress is clearly demonstrated by the fact that an earlier, rejected draft of the statute, prepared during the 59th Session of Congress, read:

> "That the copyright . . . may be further renewed and extended by the author, if he be still living, or if he be dead, leaving a widow, by his widow, or in her default or if no widow survive him, by his children . . ." (Sec. 19, H. R. 19853 and S. 6330, 59th Cong., 1st Sess., entitled, "A Bill to Amend and Coordinate the Acts Respecting Copyright."),

and that the said draft was revised by the following 60th Congress, which enacted the present law, to omit the distinction between widow, widower or children. The final, revised Act is more clearly understood when we observe

the report of the Committee of the 60th Congress, as follows:

> "Your committee do not favor and the bill does not provide for any extension of the original term of twenty-eight years, but it does provide for an extension of the renewal term from fourteen years to twenty-eight years; and it makes some change in existing law as to those who may apply for the renewal. Instead of confining the right of renewal to the author, if still living, or to the widow or children of the author, if he be dead, we provide that the author of such work, if still living, may apply for the renewal, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower or children be not living, then the author's executors, or, in the absence of will, his next of kin. It was not the intention to permit the administrator to apply for the renewal, but to permit the author who had no wife or children to bequeath by will the right to apply for renewal." (H. Rep. 2222, 60th Cong., 2d Sess., pp. 14, 15.)

The report of this Committee is also cited in greater detail by this Honorable Court in the case of *Fred Fisher Music Co. v. M. Witmark & Sons, supra.*[12]

The Act of 1831, for the first time, granted a renewal right to the widow and children, following the death of the author. All parties concede that under the Act of 1831 the widow and children shared in the renewal copyright. Peculiarly, petitioner and the *amici curiae* do not seem to be disturbed by the fact that the 1831 Act did not provide the percentage of division, and therefore we must assume that all parties concede that the widow and

---

[12]318 U. S. 643, 654-655, 63 S. Ct. 773, 778, 87 L. Ed. 1055, 1062-1063 (1943).

children shared the renewal as a class even under the prior statute.

This Act of 1831 provided:

> ". . . that if, at the expiration of the aforesaid term of years, such author be still living, or being dead, shall have left a widow, or child, or children, either or all then living, the same exclusive right shall be continued to such author, designer, or engraver, or, if dead, then to such widow and child, or children, for the further term of fourteen years. . . ."

In granting the privilege of exercising the renewal by persons other than the author for the first time, Congress delineated that all of the designated class of persons entitled to renew need not be living at the end of the first term, and for this purpose inserted the phrase, "either or all then living."

The 1870 Act[13] provided, in part:

> ". . . that the author, if he be still living, . . . or his widow, or children, if he be dead, shall have the same exclusive right continued for the further term of fourteen years. . . ."

The word "child" was eliminated in the Act of 1870 because the word "children" adequately described one or more children. The import of the words, "either or all then living," was replaced in the Act of 1870 by substituting the word "or" between the words "widow" and "children," thus indicating, in the same manner as had the phrase, "either or all then living," that it was not necessary that *every* person in the class survive to the

---

[13]Copyright Act of July 8, 1870, c. 230, Sec. 88, 16 Stat. 212.

end of the first term, and that it was not necessary that *every* person in the class join in the renewal application.[14]

It is contended by petitioner that the said Act of 1870 (enacted by the 41st Congress, Second Session) eliminated the word "and" between the word "widow" and the word "children," as provided in the Act of 1831, and it is petitioner's position that the 41st Congress thereby made some drastic change in the existing law. This is not the fact and a review of the statute of 1870 will clearly indicate that the Act of 1870 retained all of the provisions of the existing law (including all benefits bestowed by the Act of 1831). In this respect note that the Congressional Globe, 41st Congress, Second Session, Part 3, page 2680, referring to the bill reported by the Commissioners of Revision stated: "It (the bill) was examined by that Committee (House Committee on Revision of Laws) and was found to *embody all the provisions of existing law,* in brief, clear, and precise language." (Emphasis as well as parenthetical portions added.) The foregoing is emphasized further by the Congressional Globe of said 41st Congress, Second Session, at page 2854, where we find the following reported:

> "The Committee have also considered the effect of the proposed revision upon all existing legal rights, and in the clause of repeal and the schedule of acts

---

[14]Of considerably more importance to the case at bar are three items which are readily apparent from the Act of 1831. First, historically it is not true that Congress has always evidenced an intent to prefer a widow to the exclusion of children in conferring a benefit under Federal statutes, and, more particularly, under the Copyright law. Second, that although the widow and children shared as a class, the Act of 1831 is completely silent on the subject of the proportionate share to be allocated to each member of the class. Third, Congress apparently saw no insurmountable problems regarding proportionate shares or the marketability of the copyrights, even to the extent that it was not deemed necessary to spell out the proportionate shares which the widow and children would each take.

repealed referred to in it *they have carefully preserved every existing right*, extending the remedial provisions of this act to all proceedings and suits hereafter commenced, so that where remedies are enlarged they will be available to all those who shall seek those remedies upon existing rights hereafter. That is the principle by which the committee has been governed in offering amendments to the bill and also in considering the report of the commissioners of revision. *Their object has been, not to disturb any existing rights* or to take away any remedies, but to enlarge the remedies in every case where they could do so consistently with the principle of the law." (Emphasis added.)

**(3) The Objects and Purposes of the Statute, as Well as Considerations of Equity and Conscience, Point Unerringly to the Construction That the "Widow, Widower, or Children", Constitute a Single Class for Renewal Purposes.**

We have noted that the only reason for the split term is to protect the author and those dependent upon him, and that the renewal portions of the Act were only designed to protect widows and children from the supposed improvidence of authors.[15] This Honorable Court has held that considerations of equity and conscience may enter into the interpretation of statutory enactments.[16] If additional words must be added to construe the Act, then words should be added which best place the Act in implementation

---

[15] *Shapiro, Bernstein & Co. v. Bryan*, 123 F. 2d 697, 700 (C. C. A. 2d, 1941).

[16] *S. E. C. v. C. M. Joiner Leasing Corp.*, 320 U. S. 344, 350, 64 S. Ct. 120, 123, 88 L. Ed. 88, 93 (1943); *United States v. Dotterweich*, 320 U. S. 277, 280, 64 S. Ct. 134, 136, 88 L. Ed. 48, 51 (1943), reh. den. 320 U. S. 815, 64 S. Ct. 367, 88 L. Ed. 492 (1943); *Dinkins v. Cornish*, 41 F. 2d 766, 767 (E. D. Ark., W. D., 1930); 50 Am. Jur. 283-297.

of its apparent and inherent purposes which are primarily to grant protection to the immediate family of the author. A child is as much a dependent to be protected by society as is a widow or widower. As a matter of public policy, a widow, widower, and children are equally entitled to protection. Various intestate provisions almost universally provide that the child, the widow and the widower all share in the estate of the deceased spouse and parent, and the laws relating to pretermitted heirs are further evidence that society is normally unwilling to accept a failure to provide for children. (Note: The foregoing analogies are not intended to create the impression that there is a relationship between hereditaments and the copyright franchise, because the copyright franchise is a grant by society of a privilege to certain persons, or groups of persons, who society believes are in need of protection or benefits and, in this respect, the copyright franchise, and particularly the renewal right, is entirely different from an incorporeal right which may be the subject of testamentary provision or intestate succession.) As representatives of society, legislatures have historically enacted statutory protection for children. Congress did not intend to prefer any one of the class, "widow, widower, or children," to the other.

If precedence were given to the widow or widower over the children with respect to renewals, such widow or widower would receive not merely a life estate, but the entire right,[17] and even if the widow or widower died immediately thereafter, the entire copyright would nevertheless go to the estate of such widow or widower, and not to the author's children. Congress did not so provide, and did not intend such unjust result.

In this respect, petitioner's brief, page 14, states that "granting preference to the widow with respect to the

---

[17] *Cf. White-Smith Music Publishing Co .v. Goff*, 187 Fed. 247, 250 (C. C. A. 1st, 1911).

renewal copyright does not mean that the children are excluded" and that "upon the death of the widow the renewal copyright becomes the property of the children." These statements are contrary to law and misleading, because if the widow should receive the renewal to the exclusion of the children, that ends all rights of the children in the second twenty-eight years. Many examples may be given of situations illustrating the need for direct protection of children of an author. Thus: the last wife or husband of an author who married two or more times would take the renewal to the exclusion of the author's children of earlier marriages; the widow or widower may be improvident, or might favor the children of a subsequent marriage entered into after the death of the author, to the prejudice of the author's children; or the widow or widower may be on unfriendly terms with the author's children, and deprive them of the protection intended by Congress.

**(4) Problems of Construction Are Traditionally Within the Province of the Court. The Solution Is Not Dependent Upon the Divergence of Opinions That Exist in Copyright Practice, and Cannot Be Resolved by Taking Evidence of the Economic Advantage or Disadvantage Resulting From Respective Constructions.**

Petitioner and the *amici curiae* suggest that the industry and its counsel have generally accepted the fact that a widow or widower surviving a deceased author has the sole right to the renewed copyright to the exclusion of the surviving children of the author. We state, without painstaking, that this suggestion is untrue. We respectfully submit that many leading counsel throughout the entertainment industries and perhaps a substantial majority thereof, hold the opinion that the surviving spouse and children constitute a single class, just as the group, "next of kin," constitutes a class under the Act. The

opinion of the Honorable Court of Appeals does not come as a surprise to anyone who has given the statute appropriate consideration.

The entire publishing and entertainment industries are aware of Circular No. 15 of the Copyright Office, entitled, *"Instructions for Securing Registration of Claims to Renewal Copyright,"* which is also often cited by legal writers on the subject of copyright, and which states in its very first provision the following:

"The following persons are entitled to claim a renewal copyright:

"1. Aside from the groups of works mentioned in Paragraph 2, below, renewal copyrights in all works (including works by individual authors which appeared in periodicals or encyclopaedic or other composite works), may be claimed by the following *groups* of persons:

"(a) The author of the work, if he is still living at the time when renewal is sought.

"(b) *If the author is not living, his widow (or widower), or children may claim renewal.*

"(c) If neither the author, his widow (or widower), nor any of his children are living, and the author left a will, the author's executor may claim renewal.

"(d) If the author died without leaving a will, and neither his widow (or widower) nor any of his children are living, his next of kin may claim renewal." (Emphasis added.)

The position of the Copyright Office stated by George D. Carey, Principal Legal Adviser to the Copyright Office [R. 8-10] that the widow or widower does not take precedence over the children and that the benefits of the

renewals are held as tenants in common, so that if one of the class renews it is for the benefit of all, has not been obscured from the industry and its counsel these many years. In the absence of direct case authority, the construction by those charged with the duty of executing the statute is entitled to persuasive weight and ought not to be overruled without cogent reasons.[18]

See *Chafee, Reflections on the Law of Copyright*, 45 Columbia Law Review, 503, 527 (1945), where, after citing Section 23 (original) the author states:

> "Do the widow and children of a dead author take successively or as a united group? The Copyright Rules and Regulations treat them as all on the same step (Copyright Rules and Regulations (1942), §201.24(2), 17 U. S. C. A. 109 (Supp. 1944));. . ."

In 19 St. John's Law Review 95 (1945), at page 98, in discussing ownership in common of copyrights, the author, Theodore R. Kupferman, states that ownership in common results "* * * from the succession of spouse and children or next of kin to the renewal right as provided for in Sections 23 and 24 of the Copyright Act of 1909. If the author does not survive to apply for renewal in the twenty-eighth year of the statutory copyright, then his widow or children may apply, taking as tenants in common."[19]

---

[18] *Billings v. Truesdell*, 321 U. S. 542, 552, 64 S. Ct. 737, 743, 88 L. Ed. 917, 923 (1944); *Turnbull v. Cyr*, 188 F. 2d 455, 457 (C. A. 9th, 1951); *Hoague-Sprague Corporation v. Frank C. Meyer Co.*, 31 F. 2d 583, 585 (E. D. N. Y., 1929). See also, *Bent v. C. I. R.*, 56 F. 2d 99, 102 (C. C. A. 9th, 1932).

[19] Citing Copyright Act of 1909, Sec. 23, 17 U. S. C., Sec. 23; 44 Col. L. Rev. 712, 717, and stating that the regulations of the Copyright Office place them all in one category. (C. II, Title 37, C. F. R. (1939), Sec. 201.24(2).)

See, also, *Kupferman, Renewal of Copyright—Section 23 of the Copyright Act of 1909*, 44 Columbia Law Review 712, 717 (1944):

"First come the spouse and children of the author. * * * it is submitted that the spouse does not take precedence but that spouse and children hold together as tenants in common."

See *Tannenbaum, Practical Problems in Copyright*, C. C. H. Law Handbook, 7 Copyright Problems Analyzed 7, 12 (1952):

"Whether the widow takes precedence over the children in renewing the copyright has not been adjudicated, although this question is constantly troubling the Copyright Bar. The sound and only proper view is that the widow and children are members of the same class, any member of which can apply for the renewal and obtain legal title to the renewal but he will be deemed a trustee thereof for the other members of the class. If it were the intention to give the widow precedence over the children, the Act would have so stated. The section would then have read, that the widow could renew, if the author is not living, of if neither the author or widow is living, then the renewal should be by the children.

"The injustice of holding otherwise is evident in the case where an author had been married several times and was survived by children by a prior marriage.

"Could it be said that the Act intended that the wife who was the widow at the death of the author should take the entire renewal to the exclusion of the children by a prior marriage? Where the widow and several children survive, and one child files a

renewal, he holds the legal title for himself as trustee for the widow and each of the other children."[20]

See *Bricker, Renewal and Extension of Copyright*, 29 So. Cal. L. Rev. 23, 28 (1955), which states: "A careful reading of the section leads to the conclusion that the widow, widower and children constitute one class."

See, also, recent case comment 69 Harv. L. Rev. 1129 (1956).

In view of the text of the statute and the expressions of the leading authorities indicated above (as well as others), it would appear that one who has researched the subject could hardly contend for a strong element of surprise in the opinion of the Honorable Court of Appeals. Furthermore, can it be said that those who deal constantly with the Copyright Office are not familiar with the regulations of that office prescribing the rules for obtaining renewals of copyrights in that office?

The renewal portion of the Copyright Act was adopted to protect authors and their families from losing the entire right to assignees. From the standpoint of assignees, prudent business practices have always dictated that they should acquire as many and as extensive rights as possible before the particular work attains its full commercial value. Prudent business considerations also dictate that an expectancy can be acquired for a lower cost before it matures. Obviously an assignee would like to eliminate competition by having all and the only rights. Assignees, therefore, generally attempt to acquire all future expectancies; however, they are frustrated by the fact that there is no way, under the Act, in which an

---

[20]See also 2 *Warner, Radio and Television Rights*, 246, Sec. 81 (1953); 2 *Socolow, The Law of Radio Broadcasting*, 1218, Sec. 686 (1939). *Cf. Silverman v. Sunrise Pictures Corp.*, 273 Fed. 909, 912 (C. C. A. 2d, 1921), cert. den. 262 U. S. 758, 43 S. Ct. 705, 67 L. Ed. 1219 (1923).

assignee can be absolutely certain of obtaining the renewal term, or even an absolute interest therein, prior to its actual vesting. The assignee is never completely safe until he has contracted for the expectancies of the following: the author; the author's wife or husband and the author's children; the author's potential executors; the author's next of kin; the author's possible next wife or next husband; the author's children to come and next of kin to come; and these contractual problems are multiplied by the number of authors who have contributed to a single work and by their respective relationships in life.

The Court will note that the deceased, George G. DeSylva, in all cases wrote with several co-authors and composers. All works were written and copyrighted with collaborators. See Appendix to Brief of Music Publishers Protective Association, Inc. as *amicus curiae*, C-5, D-9, D-10, D-11, D-12, D-13, D-14 and E-9.

Despite these many deterrents, petitioner and certain of the *amici curiae* refuse to recognize that the acquisition of expectancies contemplates the risks of living men in a changing world, and that the very purpose of the renewal section of the Act is to protect these classes of persons who may be the recipients of the freshly renewed copyright from the loss of the same prior to the time that the right accrues.

The so-called "practical arguments" of petitioner and the *amici curiae* were made in the committee sessions prior to the enactment of the present law, and by the publishers at all times since that date. The publishing industry was at all times opposed to the split term of copyright and the concept of the second term of franchise which gave a fresh, new and unfettered right of renewal to the immediate members of the author's family and others. The publishers (and assignees generally) have made no secret of their desire to have a single term

of copyright extending over the entire period of fifty-six years in order to facilitate the acquisition of all rights in a copyright, and in order to avoid the bargaining and the new considerations which must be paid and expended to obtain the renewal term. It is no secret that these arguments have been made by the publishers against the enactment of the Act, as well as against the Act since its enactment.

The briefs of petitioner and *amici curiae* have afforded the opportunity to again quarrel with the statute, which in fact was not designed to facilitate the acquisition of renewal rights by publishers, but was in fact designed to give protection against such prior alienation of the right from the family group.[21]

Petitioner argues that the renewed copyrights would be worth more to the widow and others if the child had no interest therein. The answer to this contention is found in the statement of the learned Justice Cardozo:

> "One does not lose what is one's own because its utility would be greater if it were awarded to some one else." *Golde Clothes Shop, Inc. v. Loew's Buffalo Theatres, Inc.*, 236 N. Y. 465, 141 N. E. 917, 30 A. L. R. 931 (1923).

The final answer to the "practical arguments" of petitioner and the *amici curiae* is determined by the very fact that Congress rejected these same arguments by enacting and reenacting the split term or renewal section of the copyright provisions in substantially its present form.[22]

Unfortunately, it has been suggested that the decision of the Honorable Court of Appeals in the instant cause

---

[21] Senate Report, 60th Cong., 2d Sess.

[22] Act Mar. 4, 1909, c. 320, Sec. 23, 35 Stat. 1080; Act Mar. 15, 1940, c. 57, 54 Stat. 51; Act July 30, 1947, c. 391, Sec. 1, 61 Stat. 652.

has created some new confusion or new problem which did not previously exist. The very nature of the situation indicates that such is not the case and that the various problems have existed since the enactment of the Copyright laws.

This Honorable Court has stated, in the case of *Fred Fisher Music Co. v. M. Witmark & Sons:*

> "'The question is, whether the author or the bookseller should receive the reward.' . . . The meaning of this sentence read in its context is quite clear. By providing that, if the author should not survive the original term, his renewal interest should, instead of falling into the public domain, pass to his widow and children, Congress was of course preferring the author to the bookseller."[23]

---

[23]318 U. S. 643, 651, 63 S. Ct. 773, 776, 87 L. Ed. 1055, 1061 (1943). Although this Honorable Court held, by a divided opinion, against the authors on the question of assignability of the "renewal" expectancy, the booksellers (assignees) have certainly not received a complete victory, because the assignment can only be of an expectancy which may, or may not, come into existence insofar as the assignor is concerned because the expectancies or chose in action may never exist unless the author survives the original term. The law does not particularly favor assignments of expectancies and tends, in general, to limit alienations in the nature of perpetual leases, licenses, perpetuities, etc., and the question therefore arises as to whether or not agreements to assign expectancies will be enforced in equity when, in fact, the subject-matter does come into existence. The assignee must be prepared to meet the equitable defense of inadequacy of consideration, as well as legal defenses. (See *Fred Fisher Music Co. v. M. Witmark & Sons,* 381 U. S. 643, 647, 63 S. Ct. 773, 775, 87 L. Ed. 1055, 1059 (1943).) In *Rossiter v. Vogel,* 134 F. 2d 908 (C. C. A. 2d, 1943), and *Carmichael v. Mills Music,* 121 Fed. Supp. 43 (S. D., N. Y., 1954), summary judgment was denied when the author contended that the transfer should not be enforced because of inadequacy of consideration and unconscionable advantage taken of him at the time the contracts were executed.

After the passage of the first twenty-eight year period, the problem of determining who owns a copyright may become difficult, indeed. Renewal operates like a fresh registration. It is therefore necessary to go back to the author or composer for several of

Although the particular question raised here as between widow, widower and children has not been previously directly passed upon by the courts, it has been repeatedly held that where one of a class entitled to renew a copyright obtains the renewal, he holds the same in trust for the benefit of the entire class.[24] In view of the fact that there is only one child (and one widow), it is not necessary for this Court to determine a situation involving several children; however, since the "widow, widower, or children" constitute a class, the law is well settled that if one member of a class renews, the renewed copyright results to the benefit of all members of that class living.

---

them, in the case of almost all musical compositions), and their families, executors, next of kin, and start all over again to determine which of the various classes designated under Section 24 of the Act survive. This problem is certainly not new in the industry and is inherent in the very nature of a right which first accrues after the lapse of twenty-eight years from the date of publication of the original copyright material.

The assignees, having gained the limited advantage of a determination that the Act of Congress (Sec. 24, Copyright Act) permits the author to contract for the assignment of the expectancy, now seek to limit the number of persons from whom such assignments must be secured in order to obtain such further benefit; however, they are faced with the problem that the author cannot contract away the rights of the widow and children, whom Congress has protected, unless the author is living in the twenty-eighth year of the original term, when the new estate accrues. In view of this Court's divided opinion in the case of *Fred Fisher Music Co. v. M. Witmark & Sons, supra,* one can agree to convey an expectancy when it matures; however, the assignees nevertheless continue to have the problem of attempting to predetermine or predesignate the identity of the recipients of such expectancy, and therefore continue to direct their efforts towards the acquisition of the entire protected period, when, in fact, the legislation adopted by Congress was designed to give a new franchise and a new source of revenue to the particular class of persons surviving at the time the renewal right accrues.

[24] *Tobani v. Carl Fisher, Inc.*, 98 F. 2d 57 (C. C. A. 2d, 1938), cert. den. 305 U. S. 650, 59 S. Ct. 243, 83 L. Ed. 420; *Silverman v. Sunrise Pictures Corp., supra.* See also, *Edward B. Marks Music Corp. v. Jerry Vogel Music Co., Inc.*, 140 F. 2d 266, 267 (C. C. A. 2d, 1944); *Edward B. Marks Music Corp. v. Wonnell*, 61 Fed. Supp. 722, 727 (S. D., N. Y., 1945); *Bricker, Renewal and Extension of Copyright*, 29 So. Cal. L. Rev. 23, 28 (1955).

at the time. This rule of law has been applied universally, and without exception in cases arising under the Act.

Literally thousands of works protected in the second period of copyright are presently being published in such renewal period by new and different publishers, as well as more than one publisher, for the reason that the respective authors and collaborators, and their widows, widowers, and children, as well as executors, next of kin, etc., have determined that it is to *their best economic interests* to give the renewal rights to different publishers.[25] Although the Copyright Office registrations and recordings are numerous, and encompass every variety of situation, reference to such recordings will clearly indicate the trend in the renewal period.[26] The records of our courts are

---

[25]We submit that most instances of "split copyrights" cause vigorous competitive bidding for the respective rights of the class (and for the respective rights of the co-authors), thereby resulting in the beneficiaries of the renewal copyright grant realizing a greater total amount.

[26]"DADDY LONG LEGS"
By Joe Young; Harry Ruby, Sam Lewis.
Published by Warock Music, Inc., and Mills Music, Inc.
"HOW YA GONNA KEEP 'EM DOWN ON THE FARM"
By Joe Young, Sam Lewis; Walter Donaldson.
Published by Warock Music, Inc., and Mills Music, Inc.
"I'M ALWAYS CHASING RAINBOWS"
By Joe McCarthy, Harry Carroll.
Published by Fred Fisher Music Co., Inc., and Robbins Music Corp.
"ROCK A BYE YOUR BABY WITH A DIXIE MELODY"
By Sam Lewis, Jean Schwartz, Joe Young.
Published by Warock Music, Inc., and Mills Music, Inc.
"ON THE ALAMO"
By Gilbert Keyes (pseud. of Gus Kahn), Joe Lyons, Isham Jones.
Published by Forster Music Pub., Inc., and Bantam Music Pub., Inc.
"AMERICA I LOVE YOU"
By Edgar Leslie, Archie Gottler.
Published by Edgar Leslie, Inc., and Mills Music, Inc.
"BALLIN' THE JACK"
By Cris Smith, Jim Burris.
Published by E. B. Marks Music Corp. and Jerry Vogel Music Co., Inc.

also testimony to the practice which exists in the second period.[27]

---

"WAITING FOR THE ROBT. E. LEE"
By Lewis Muir, Wolfe Gilbert.
Published by LaSalle Music Publ., Inc. and Alfred Music Co., Inc.

"BRIGHT EYES"
By Harry Smith, Otto Motzan, M. K. Jerome.
Published by Jerry Vogel Music Co., Inc., and Mills Music, Inc.

"I AIN'T GOT NOBODY, AND NOBODY CARES FOR ME"
By Roger Graham, S. Walter Williams.
Published by Jerry Vogel Music Co., Inc., and Mayfair Music Corp.

"I'LL BE WITH YOU IN APPLE BLOSSOM TIME"
By Albert Von Tilzer, Neville Fleeson.
Published by Jerry Vogel Music Co., Inc., and Broadway Music Corp.

"MARGIE"
By Russell Robinson, Benny Davis, Con Conrad.
Published by Fred Fisher Music Co., Inc., and Mills Music, Inc.

"MY MELANCHOLY BABY"
By George Norton and Ernie Burnett.
Published by Shapiro-Bernstein & Co., Inc., and Jerry Vogel Music Co., Inc.

"NOBODY'S SWEETHEART"
By Gus Kahn, Ernie Erdman, E. Schoebel.
Published by Mills Music, Inc., and E. H. Morris & Co., Inc.

"SHEIK OF ARABY"
By Harry Smith, Francis Wheeler, Ted Snyder.
Published by Mills Music, Inc., and Jerry Vogel Music Co., Inc.

"TUCK ME TO SLEEP IN MY OLD (KEN) 'TUCKY HOME"
By George W. Meyer, Samuel Lewis, Joseph Young.
Published by Warock Music, Inc., and Bourne, Inc.

"WHISPERING"
By John Schoenberger, Vincent Rose, Richard Coburn.
Published by Fred Fisher Music Co., Inc., and Miller Music Corp.

[27]A typical example is *Edward B. Marks Music Corp. v. Jerry Vogel Music Co.*, 49 Fed. Supp. 135 (S. D., N. Y., 1943) aff'd 140 F. 2d 270 (C. C. A. 2d, 1944), in which several persons collaborated in a musical composition entitled "I Wonder Who's Kissing Her Now". Thereafter one of the copyright owners who had filed application for renewal and who had assigned to one publisher, attempted to deny the remaining co-author's right to assign to other publishers. Actions have been brought upon renewed rights registered by cousins. For example, *Fitch v. Shubert*, 20 Fed. Supp. 314 (S. D., N. Y., 1937).

Obviously this Honorable Court cannot, in this proceeding, take evidence as to what may, or may not, be best for the economic interests of authors and their families, or for that matter, of assignees, because in this cause we are presented with the express language of the statutory enactment which cannot be modified by the weight of evidence.[28] However, in view of the contentions made by petitioner and some of the *amici curiae*,[29] we observe that:

In the second period we are dealing with the value of a work in the twenty-ninth year and thereafter, following the first date of publication, and there is no necessity for one exclusive publisher.

The Brief of Music Publishers Protective Assn., Inc., as *amicus curiae,* in the Appendix, B to H, inclusive, dramatically emphasizes the economic benefit of having more than one publisher in the renewal period. These contracts demonstrate that the child receives, only for his partial interest, the sum of $100,000.00, plus everything else that would have been received by Mr. and Mrs. DeSylva and more.

It is of utmost importance that the renewed copyrighted work be constantly exposed to the public by one who has made a substantial investment in the "renewed" rights and is therefore interested in recovering the investment by exploiting the property. The more the exposure, the more the use, and the more the use, the more the income, and the greater the value. It is not improbable to as-

---

[28]Respondent is faced with the task of answering four *amicus curiae* briefs filed herein, which briefs consist, to a large extent, of arguments based on representations of existing economic conditions and business practices as to which the record in this cause is silent.

[29]In so far as the *amici curiae* briefs repeat the arguments made in petitioner's brief, we shall not answer them separately herein but respectfully submit that those arguments have been answered by the other portions of this brief.

sume that if the original assignee should acquire the entire fifty-six year period, many of the older copyrighted works held by such assignees would be obscured by new copyrighted works acquired and would, in fact, be relegated to dusty warehouse shelves.[30]

## POINT III.

### An Acknowledged Illegitimate Child Is a "Child" of the Original Copyright Owner Within the Meaning of the Renewal Provisions of the Copyright Law.

#### (1) The Common Law Concept of Quasi Nullius Fillius Has No Application in This Cause.

Petitioner contends that the respondent acknowledged child is not a child within the meaning of the word "children" as used in the Act, and that the ancient concept of *quasi nullius fillius* applies. Petitioner has thus taken the narrow, harsh position, that no one except a child born following a lawful marriage should be considered a "child" within the meaning of the word "children" as used in the Act, granting the benefits of the renewed copyright franchise to certain dependents of authors.

Under petitioner's contention all children born of a putative marriage, all children by adoption, all children who have been legitimated, all children solemnly acknowledged by their fathers, all children whose parents subsequently intermarry and all children conceived of void or

---

[30]It is at times difficult to understand the position of some of the *amici curiae* in this matter, because the problem is not new. The Song Writers Protective Association (*amicus curiae* here) has established an industry-accepted form of contract between authors and publishers which provides that after the original period of copyright, all rights and benefits revert to the author and his family. We suggest that this is the principal accomplishment of that organization, and is, indeed, a commendable one.

illegal marriages, are excluded from the benefits bestowed by said Act, and such children would be excluded regardless of the love and affection or personal relationships which existed between the parent and such child, and the corresponding duty of support which universally prevails under our present social and legal system.

In this respect petitioner insists upon applying a rule of prejudice which existed at the time of William The Conqueror to the present-day construction of a statute designed and granted by society primarily to benefit the dependents of a deceased author after the author's death.

The concept contended for by petitioner originated in the civil law, and we find that it was adopted and applied, not as a rule of substantive law, but only as a rule of evidence or procedure. It will be recalled that William The Conqueror separated the civil and ecclesiastical courts and forbade tribunals of either class from obtaining cognizance of cases relating to the other. Among other things, ecclesiastical courts were given jurisdiction in probate and divorce matters and were particularly notorious for the punishment meted out for sexual offenses. That the rule of *quasi nullius fillius* was merely a rule of evidence or procedure is affirmed by decisions of the English Chancery Court. We note, for example,

> ". . . a man cannot provide for the illegitimate children either of himself or of another man by any reference that involves an inquiry as to their paternity. The law allows no criterion of paternity but marriage. . . ." (Per Bowen, L. J., *In the Matter of Re Bolton,* 31 Ch. D. 542 (1886).)

Even at common law the rule of *nullius fillius* was confined to heirship and the right to hold church office; and in all other respects there was no distinction between an

"illegitimate child and another man."[31] This common law policy was founded on the presumed evidentiary necessity,

> ". . . that the heir should be one whose right could be ascertained, therefore marriage, an act capable of proof, could be relied upon as determining the heir." (*Ayer, Legitimacy and Marriage,* 16 Harv. L. Rev. 22, 23 (1902).)

The rule of evidence which precluded proof of paternity by any means other than by first laying the foundation of a valid marriage, has long since disappeared from our judicial system, and *nullius fillius* has faded in the limited range of its application in determining heirship. The word "children" now designates the progeny of human parents.

The common law made no provision for adopting, legitimating or acknowledging children, whereas, under the law now universally applied, an adopted child, as well as a child legitimated or acknowledged, is entitled to inherit from its parents.[32]

We particularly note that there is no problem as to the identity of the acknowledged child in the instant cause. It has been stipulated by the parties that the child Stephen

---

[31]See 2 *Kent, Commentaries on American Law* (11 Ed., 1867), 230. In some cases the harsh rule was avoided through strategem. In the old English case of *Wilkinson v. Adams,* 1 Ves. & Bea., 422, 462, 35 Eng. Rep. 163, 179, it is interesting to note that the opinion of Lord Chancellor Eldon at the outset is specific that the point considered "regards the real estate" as the title is affected by the will. And the Lord Chancellor, in the course of his opinion, states that the limitations as to the prima facie meaning of the word "child" derives from Coke and the citations are solely "cases of deeds." Coke, in Co. Lit. 3b.

[32]The author under the Copyright Law may, of course, be either a man or a woman. There is no doubt that the universal rule provides that an illegitimate child inherits from its mother. It is also the universal rule that even an illegitimate child is a creditor of his father's estate for amounts necessary for support and education during its minority. Under all circumstances, an illegitimate child is entitled to support from its parents and is a dependent under the law.

is the child of the deceased author [R. 20], and it is undisputed that the child has been solemnly, formally and fully acknowledged by the father-author as his child [R. 21]; that the deceased author accepted said acknowledged child as his own, and dealt with him as his own; that he had no other children; that he wanted the child to know that he was his father; and that he would like to treat the child as a son, and wanted the child very much to treat him as a father [R. 23 and 24]. The child was formally acknowledged within the meaning of Section 255 of the Probate Code of the State of California [R. 22-24] (Appendix B).

It is submitted that the statute, itself, presents the most persuasive argument that *quasi nullius fillius* does not apply, because the statute was designed to protect children as dependents.

We must at all times bear in mind that "author," as that term is used in the statute, contemplates a female as well as a male author. The Act of 1909 uses the words "widow, *widower*, or children," indicating that the author may be a woman or a man, and this Court may take judicial notice that authors, in fact, often are women.

Although originally, under the concept of *nullius fillius*, an illegitimate could not inherit from either parent, this rule was relaxed at an early stage of common law development, so that even under the common law an illegitimate inherited from its mother. If an unmarried female author leaves a child surviving her, then, and pursuant to petitioner's contention, the child would have no claim upon the renewal copyrights. Certainly this was not the purpose or intent of Congress. Is it then the petitioner's contention that the word "children" as used in the statute includes illegitimates when the "author" is a woman, but does not include illegitimates when the "author" is a man? The answer is self-evident that there is no basis for such distinction.

**(2) The Word "Children" as Used in Section 24 of the Act Includes an Illegitimate Child, Even When Not Acknowledged by Its Father.**

Petitioner contends that an illegitimate child is *filius populi;* that he occupies a social status tainted with disgrace, and that by virtue thereof his only recourse is to become a burden upor society. This contention is entirely and diametrically opposed to the very purpose of the renewal provisions of the Copyright Act which were enacted to protect the immediate dependents of a deceased author. The protection which Congress afforded in accordance with the enlightened social concepts which attended the enactment of the statute does not differentiate between legitimate and illegitimate children.

See the analogous case of *Middleton v. Luckenbach S.S. Co.*, 70 F. 2d 326 (C. C. A. 2d, 1934), which involved the deaths of several persons on the high seas. Recovery was sought under the Federal Death Act (46 U. S. C., Sec. 761 *et seq.*), which provided for a suit to recover damages for the benefit of "decedent's wife, husband, parent, child or dependent relative * * *." The questions presented in that case were whether under such statute an illegitimate child could recover damages for the death of its parent, and whether the parent of an illegitimate child could recover damages for the child's death. *The court answered both questions in the affirmative.* The opinion pointed out that in its ordinary meaning the word "child" would include an illegitimate child; that although under some constructions as found in legal dictionaries the word "child" means a legitimate child, such construction originated in the consideration of wills, deeds, and statutes of inheritance, which differ from the questions here under consideration. In language particularly appropriate to our case the Court went on to state:

"There is no right of inheritance involved here. It is a statute that confers recovery upon dependents,

not for the benefit of an estate, but for those who by our standards are legally or morally entitled to support. *Humane considerations and the realization that children are such no matter what their origin alone might compel us to the construction that, under present day conditions, our social attitude warrants a construction different from that of the early English view.* The purpose and object of the statute is to continue the support of dependents after a casualty. *To hold that these children or the parents do not come within the terms of the act would be to defeat the purpose of the act.* The benefit conferred beyond being for such beneficiaries *is for society's welfare* in making provision for the support of those who might otherwise become dependent. *The rule that a bastard is nullius fillius applies only in cases of inheritance.* Even in that situation we have made very considerable advances toward giving illegitimates the right of capacity to inherit by admitting them to possess inheritable blood. 2 Kent's Commentaries (12th Ed.) 215." (Emphasis ours.)[33]

In *Green v. Burch,* 164 Kan. 348, 189 P. 2d 892 (1948), the Kansas Supreme Court stated:

"The appellee places particular reliance upon the construction which was given by this court to the so-called 'soldiers' compensation act' in the case of Miller v. Miller, 116 Kan. 726, 229 P. 361, 362, 35 A. L. R. 787. In the last-cited case it was held that a son, who was the child of a bigamous marriage and therefore illegitimate, was within the statutory provisions granting soldiers' compensation benefits to minor children of veterans. In such case it was urged that in the absence of a specific provision to

[33]70 F. 2d 326, 329-330 (C. C. A. 2d, 1934).

the effect that illegitimate children should share in the bounty of the state, the legislature necessarily intended that only children born in lawful wedlock should receive the compensation earned by the service of the veteran. In the Miller case, *supra,* this court clearly was passing upon the meaning which should be given to the term 'children' in Kansas. The involved statute provided that compensation should be paid for the use and benefit of the widow and minor 'children,' if any, and did not define the term 'children.' The opinion in the Miller case, *supra,* written by Mr. Chief Justice Johnston, reads:

"'* * * Who are the minor children to whom reference is made? Manifestly, they are those for whose life the veteran is responsible and to whom he owes the obligation of maintenance. The statute makes no discrimination between legitimate and illegitimate minor children. It is an independent provision creating a new obligation of the veteran, recognizing his responsibility to support his minor children and applying the compensation awarded to that purpose. The theory on which compensation is payable to wife or minor children is his obligation and duty to support them. However, if there had been no statute creating a specific obligation, the father would still be liable for the maintenance of his illegitimate child as well as one born in lawful wedlock. In Doughty v. Engler, 112 Kan. 583, 211 P. 619, 30 A. L. R. 1065, the Court, after discussing the early common-law rule that parents were under no obligation to support illegitimate children, determined that this rule was repugnant to present day conceptions of social obligations, and so unadapted to our conditions, and so unsuitable to the needs of the people, that it cannot be regarded as a part of the law of this state * * *.'"

The view of the California Courts is enunciated in the case of *Turner v. Metropolitan Life Ins. Co.*, 56 Cal. App. 2d 862, 133 P. 2d 859 (1943). In this case the Court held that a "child" is either a son or daughter; a male or female in the first degree; the immediate progeny of human parents. The Court then stated:

> "* * * It is a matter of common knowledge that in most cases the real purpose of life insurance is to provide for the maintenance of the insured's dependents; and as will be seen, if the insured father herein had lived he would have been legally bound by civil and criminal laws to maintain his child, notwithstanding it was his illegitimate child."[34]

Petitioner would give an unchangeable meaning to the words "child" or "children," regardless of the passage of time or any change in circumstances. To propose the application of an early common law rule to this Act fails to recognize that a word may vary greatly according to the circumstances and time in which it is used.[35]

---

[34] 56 Cal. App. 2d 862, 867, 133 P. 2d 859, 861 (1943).

[35] Mr. Justice Holmes, in *Towne v. Eisner*, 245 U. S. 418, 38 S. Ct. 158, 159, 62 L. Ed. 372 (1918), said: "A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used." The same phrase may have different meanings in different connections. (*American Security & Trust Co. v. Commrs. of the D. of C.*, 224 U. S. 491, 32 S. Ct. 553, 554, 56 L. Ed. 856 (1912)), and the same words may have different meanings in different parts of the same act, and of course may be used in a statute in a different sense from that in which they are used in the Constitution. (*Lamar v. United States*, 240 U. S. 60, 36 S. Ct. 255, 257, 60 L. Ed. 526 (1916).) Words of a statute to which meaning is to be given are not phrases of art with a changeless connotation. They have a color and a content that may vary with the setting (*First Nat. Bank & Tr. Co. v. Beach*, 301 U. S. 435, 57 S. Ct. 801, 804, 81 L. Ed. 1206 (1937)), and words are but labels whose content and meaning are continually shifting with the times. (*Mass. Protective Ass'n, Inc. v. Bayersdorfer*, 105 F. 2d 595, 597 (C. C. A. 6th, 1939).)

Petitioner relies on *McCool v. Smith,* 66 U. S. (1 Black) 470, 17 L. Ed. 218 (1861), in support of the contention that an illegitimate child does not share in renewal rights under the Copyright Law. The *McCool* case held that "next of kin," as used in an Illinois statute of descent, included only legitimate kin. That decision, however, was again considered by this Honorable Court some twenty-three years later, in *Hutchinson Investment Co. v. Caldwell,* 152 U. S. 65, 14 S. Ct. 504, 38 L. Ed. 56 (1894), and its application was expressly limited to the peculiar statute of the State of Illinois as it then existed. Furthermore, we should particularly note that the words "next of kin" under the common law doctrine of *quasi nullius fillii* and the word "children" as applied to the dependents of a deceased author in present-day society, certainly have vastly different connotations.[36]

Petitioner also cites the cases of *Ng Suey Hi v. Weedin,* 21 F. 2d 801 (C. C. A. 9th, 1927), and *Louie Wah You v. Nagle,* 27 F. 2d 573 (C. C. A. 9th, 1928), which cases involved an interpretation of the word "children" under the United States citizenship statutes, and in both cases it was held that the word "children" included only legitimate or legitimated children.

Both of these cases were decided by the same circuit which twenty-nine years later decided the appeal in the instant cause, and both cases were specifically rejected, in the present cause, by the present Appellate Court in the Ninth Circuit, on the ground that the doctrine of

---

[36]Compare Note 35.

*nullius fillii* was not squarely considered and met in either case.[36a]

It is understandable that under the climate which existed in California at that time, the earlier court was greatly concerned with the problem of Asiatics, born in China, who claimed American citizenship as illegitimate children of Americans (particularly Asiatics who were only cooperative in aiding the immigration of Asiatics). It is no doubt that for that reason the citizenship statutes now contain a definition of the word "child," specifically confining the term to legitimate or legitimated children. No such change has ever been made in the Copyright Act and, in any event, it is hardly likely that an author would acknowledge an illegitimate child merely to allow such child to participate in the renewal rights.

Petitioner contends that if illegitimates are permitted to participate in the claim to the renewal, much litigation would result. But has petitioner considered what may happen to children of authors if petitioner's contention was sustained? Under this contention every time a child or next of kin sought to enforce his or her rights to the renewal under the Copyright Act the issue of the validity of th marriage of the parents of the person claiming the right could be raised. Since the question would not arise until at least the expiration of twenty-eight years, it is

---

[36a]See the very interesting case decided by the Court of Claims, *Compagnie Generale Transatlantique v. United States*, 78 Fed. Supp. 797 (1948), which holds that the purpose of the citizenship statute with respect to foreign-born illegitimates was to insure that the child had in it the blood of an American citizen and that that fact would be evident without the uncertainties of a contested trial of paternity. The Court here held that children born to an American citizen, a resident of Cuba, who had acknowledged them under Cuban law were American citizens under the citizenship statute.

obvious that matters of proof of the validity of the marriage of parents could become unduly harassing. We are not without knowledge that the artistic have many marriages, some void and some valid. If one could disenfranchise a child or next of kin by reason of technical invalidities existing in the marriages and intervening divorces of authors and composers, litigation would really become difficult and endless, and the problems presented to our courts would be multiplied, indeed.

**(3) If Renewal Must Be Made by a Child Who Is Also an Heir of the Deceased Author, Then the Determination of Heirship Must Rest Upon the Law of the State of California.**

Contrary to the position of respondent as stated above, petitioner contends that the Copyright Act is a statute of inheritance and, therefore, that the child must not only be a *child* of the deceased author, but must also be an *heir*. If it should be determined that the word "children" as used in the Act is in some manner related to the ancient, harsh common-law concept of *quasi nullius fillius*, or heirship, then, and in such event, we must consider the status of heirship as fixed by the law of the domicile as controlling upon this issue.

This Honorable Court stated, in the case of *Seaboard Air Line Ry. Co. v. Kenney*, 240 U. S. 489, 36 S. Ct. 458, 60 L. Ed. 762 (1916), in construing the phrase "next of kin," as used in the Federal Employer's Liability Act:

> "Plainly the statute contains no definition of who are to constitute the next of kin to whom a right of recovery is granted. But, as speaking generally under our dual system of government, who are next of

kin is determined by the legislation of the various states to whose authority that subject is normally committed, it would seem to be clear that the absence of a definition in the act of Congress plainly indicates the purpose of Congress to leave the determination of that question to the state law. But, it is urged, as next of kin was a term well known at common law, it is to be presumed that the words were used as having their common-law significance, and therefore as excluding all persons not included in the term under the common law; meaning, of course, the law of England as it existed at the time of the separation from the mother country. Leaving aside the misapplication of the rule of construction relied upon, it is obvious that the contention amounts to saying that Congress, by the mere statement of a class, that is, next of kin, without defining whom the class embraces, must be assumed to have overthrown the local law of the states, and substituted another law for it; when conceding that there was power in Congress to do so, it is clear that no such extreme result could possibly be attributed to the act of Congress without express and unambiguous provisions rendering such conclusion necessary. The truth of this view will be made at once additionally apparent by considering the far-reaching consequence of the proposition, since, if it be well founded, it would apply equally to the other requirements of the statute—to the provisions as to the surviving widow, the husband and children, and to parents, thus, for the purposes of the enforcement of the act, overthrowing the legislation of the states on subjects of the most intimate domestic character, and substituting for it the common law as stereotyped at the time of the separation. The argument that such result must have been intended, since it is to be assumed that Congress contemplated uniformity, that is, that the next of kin entitled to take under the

statute should be uniformly applied in all the states, after all comes to saying that it must be assumed that Congress intended to create a uniformity on one subject by producing discord and want of uniformity as to many others."[37]

In 11 Am. Jur. (Conflict of Laws) 315, Sec. 16, it is stated:

"It is a general principle of law that the status or condition of a person and the relation in which he stands to other persons are fixed by the law of the domicile and that the status so fixed is recognized and upheld in every other state, so far as is consistent with its own laws and policy."

See, also, 15 C. J. S. (Conflict of Laws) 905, Sec. 14.

It is stated in 11 Cal. Jur. 2d, at page 91:

"Because of the fact that the state of the domicile of the person whose status is in question normally has a strong social interest in relationships involving status, the courts have naturally emphasized the

---

[37]See, also, *Poff v. Pennsylvania R. Co.*, 327 U. S. 399, 66 S. Ct. 603, 90 L. Ed. 749 (1946) (construing the phrase "next of kin" as used in the Federal Employer's Liability Act).

*Hutchinson Invest. Co. v. Caldwell*, 152 U. S. 65, 14 S. Ct. 504, 38 L. Ed. 356 (1894) (construing the words "heirs" as used in Rev. St. Sec. 2269, relating to the issuance of patents on federal land). The United States Supreme Court was called upon to construe the federal land pre-emption law. The decision was that "heirs" should be construed, not as those who could be heirs at common law, but as those who could be heirs in the state in which the land lay.

*Weyerhaeuser Timber Co. v. Marshall*, 102 F. 2d 78 (C. C. A. 9th, 1939) (construing the word "child" as used in the Longshoremen's and Harbor Workers' Compensation Act, and holding that insofar as the statute gives a complete definition it is controlling; where no definition is given, state law controls).

*Ellis v. Henderson*, 204 F. 2d 173 (C. A. 5th, 1953), (construing the word "child" as used in the Longshoremen's and Harbor Workers' Compensation Act).

domiciliary law where questions of status are in issue. (Citations omitted.) A general principle of conflict of laws is that the status of a person and the relation in which he stands to other persons are fixed by the law of the domicile, and that the status so fixed is recognized and upheld in every other state, so far as is consistent with general doctrines of comity. (Citations omitted.)"

With respect to children acknowledged in Cuba by an American citizen who was a resident of that country, the Court of Claims held, in the case of *Compagnie Generale Transatlantique v. United States,* 78 Fed. Supp. 797 (1948), that such children were children under the citizenship statute then in effect with regard to children born in foreign lands of an American parent, and the Court stated:

"* * * An interpretation of the citizenship statute, then, to the effect that each of these children was the 'child' within the meaning of the statute, of an American citizen, in no way offends the mores of this Country, and we give the statute such an interpretation. It follows that the children were American citizens. * * *"

In *In re Wehr's Estate,* 96 Mont. 245, 29 P. 2d 836 (1934), decided by the Supreme Court of Montana, it was held that, under statute, an illegitimate child acknowledged by the father is placed

"on the same footing as a child born in lawful wedlock so far as the right of inheritance of his father's estate is concerned."

A most interesting case to consider in connection with this phase of our case is *Estate of Wardell,* 57 Cal. 484, decided in the January 1881 term of the California Supreme Court. The case derives from the fact that a woman failed to mention her illegitimate child in her will.

The California law then (and now) authorized a woman to dispose of her property by will and she could cut off any or all of her legal heirs by her will; and it then provided by California Civil Code, Section 1307 (enacted 1872; repealed by Stats. 1931, p. 687, Cal. Prob. Code, Sec. 1700. *Cf.* Cal. Prob. Code, Sec. 90, enacted 1931, based on former Cal. Civ. Code, Secs. 1306, 1307, and 1309 (Deering, 1944), which incorporates generally the repealed Sec. 1307), as quoted in the *Wardell* case, *supra,* at page 490, that:

> ". . . when any testator omits to provide in his will for any of his *children,* or for the issue of any deceased *child,* unless it appears that such omission was intentional, such child, or the issue of such child, must have the same share in the estate of the testator as if he had died intestate." (Emphasis added.)

It was found in the cited *Wardell* case, *supra,* that such omission by the testatrix did not appear to be intentional, and that "children" as used in the statute included those who would take as her heirs, even if they were illegitimate.

California Civil Code, Section 196a provides:

> "The father as well as the mother, of an illegitimate child must give him support and education suitable to his circumstances . . . ."[38]

It must be conceded by all, as evidenced by the entire record in this cause, that the child in the instant cause

---

[38]See, also, California Penal Code, Section 270, which provides, in part:

> "A father of either a legitimate or illegitimate minor child who wilfully omits without lawful excuse to furnish necessary food, clothing, shelter or medical attendance or other remedial care for his child is guilty of a misdemeanor and punishable by imprisonment in the county jail not exceeding two years or by a fine not exceeding one thousand dollars ($1,000), or by both. . . ."

is and has been fully acknowledged by his father. California Probate Code, Section 255 (Appendix B), provides:

> "Every illegitimate child is an heir of his mother, and also of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father, and inherits his or her estate, in whole or in part, as the case may be, . . ."

See, also, California Civil Code, Section 4,[39] which requires a liberal construction of such statutory enactment.

The California law clearly provides the reciprocal duty of support between parent and child, and no distinction is made in the Act with respect to acknowledged children, adopted children, illegitimate children, or otherwise. California Civil Code, Section 206, provides, as follows:

> "RECIPROCAL DUTIES OF PARENTS AND CHILDREN IN MAINTAINING EACH OTHER. It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to such parent is binding. (Enacted 1872.)"

In codifying California law in the year 1872, the framers of the Code included the general rule of reciprocal duty of support, as between parent and child.

If, as contended by petitioner, the child must be an heir of the author in order to be a "child" within the

---

[39]"RULES OF CONSTRUCTION. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this Code. The Code establishes the law of this State respecting the subjects to which it relates, and its provisions are to be liberally construed with a view to effect its objects and to promote justice. (Enacted 1872.)"

meaning of the word "children" in the Act, then, and in such event, the following would apply:

(a) The status as to heirship would be determined by the law of the domicile of the parties, to wit, California.

(b) In California the acknowledged child is an heir of the deceased author in this cause.

In view of the fact that the renewal portions of the Copyright Act were intended to provide protection and support for the immediate family of the author, and particularly to his or her children and, further, in view of the fact that the duty of support exists in all other cases between parent and child whether the child be legitimate or illegitimate, we must be drawn to the conclusion that the word "children" as used in the Act must necessarily refer to a child who is a dependent of the author regardless of legitimacy; and, under all circumstances, the word "children" as used in the Act must include an acknowledged child who is an acknowledged dependent and heir of the author.

## Conclusion.

The express language of the Copyright Act; the intention determined from the language of that Act; and the policy and purposes of the renewal portion thereof to protect the immediate family of the deceased author, all point unerringly to the determination and conclusion that the child is entitled to participate with the surviving spouse of the deceased author in the renewal privileges granted by the Copyright Act.

The judgment of the Trial Court should be sustained in its holding that the acknowledged child in this cause is a child within the meaning of the laws relating to copyright.

The judgment of the Trial Court should be reversed insofar as it excludes the child from participating in the copyrights which are renewed by the surviving spouse.

The surviving spouse, as a member of the class "widow, widower, or children" should be required to account to the child (who is the only other surviving member of that class) for the benefits already received by the spouse from copyrights renewed since the death of the author.

Respectfully submitted,

MILTON A. RUDIN,
*Attorney for Respondent.*

MAX FINK,
CYRUS LEVINTHAL,
LEON E. KENT,
RONALD K. LIPSTONE,
LEWIS A. DREYER,
*Of Counsel.*

## APPENDIX "A."

### TITLE 17—UNITED STATES CODE.

Sec. 24. DURATION; RENEWAL AND EXTENSION.—The copyright secured by this title shall endure for twenty-eight years from the date of first publication, whether the copyrighted work bears the author's true name or is published anonymously or under an assumed name: *Provided,* That in the case of any posthumous work or of any periodical, cyclopedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire, the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further,* That in the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further,* That in default of the registration of such application for renewal and extension, the copyright in any work shall determine at the expiration of twenty-eight years from first publication. July 30, 1947, c. 391, Sec. 1, 61 Stat. 652.

## APPENDIX "B."

### California Probate Code, Sec. 255.

Every illegitimate child is an heir of his mother, and also of the person, who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father, and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he does not represent his father by inheriting any part of the estate of the father's kindred, either lineal or collateral, unless, before his death, his parents shall have intermarried, and his father, after such marriage, acknowledges him as his child, or adopts him into his family; in which case such child is deemed legitimate for all purposes of succession. An illegitimate child may represent his mother and may inherit any part of the estate of the mother's kindred, either lineal or collateral. (Stats. 1931, c. 281, p. 599, Sec. 255, as amended Stats. 1943, c. 998, p. 2912, Sec. 1.)

---

## APPENDIX "C."

### California Civil Code, Sec. 230.

Adoption of Illegitimate Child. The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such, and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this Chapter do not apply to such an adoption. (Enacted 1872.)